

CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

COMMITTEE CONFERENCE ON
PRESIDING MEMBERS PROPOSED DECISION (PMPD)

FOR

INLAND EMPIRE ENERGY CENTER
BY INLAND EMPIRE ENERGY CENTER LLC

DOCKET NO. 01-AFC-17

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A P P E A R A N C E S

COMMITTEE MEMBERS PRESENT

Robert Pernell, Commissioner

STAFF PRESENT

Al Garcia, Advisor to Commissioner Pernell

Mike Smith, Advisor to Commissioner Boyd

Arlene Ichien, Esq., Assistant Chief Counsel

Kerry Willis, Hearing Officer

Margret J. Kim, Public Advisor

James Bartridge

Brewster Birdsall

Matt Layton

ALSO PRESENT

Greggory L. Wheatland, Esq.

Jim McLucas

Jenifer Morris

Gary S. Rubenstein

Michael Hatfield

A G E N D A

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P R O C E E D I N G S

COMMISSIONER PERNELL: Good afternoon,
my name is Commissioner Pernell, I'm the Presiding
Member of the Hearing, Inland Empire Energy
Center. This is a committee conference on the
Presiding Member's Proposed Decision, known as the
PMPD.

To my left is my Advisor, Al Garcia. To
my floor right is Commissioner Jim Boyd's -- who's
the Associate Member -- Advisor Mike Smith.
Commissioner Boyd couldn't be here this afternoon,
but he sent his regards.

The purpose of this committee conference
is to hear comments from the parties and members
of the public on the PMPD for the Inland Empire
Energy Center. This proceeding is being held here
in Perris to maximize public participation.

And before we proceed, I'd like the
parties to identify themselves and their team,
starting with the Applicant.

Mr. WHEATLAND: Good Afternoon,
Commissioner, my name is Gregg Wheatland, I'm the
attorney for the Applicant. And I'd like to ask
the others who are seated here at the table with
me this afternoon to introduce themselves.

1 MS. MORRIS: Good afternoon
2 Commissioner, my name is Jenifer Morris, and I
3 have acted as the environmental project manager
4 for the Applicant through this project.

5 MR. HATFIELD: Good afternoon. I'm Mike
6 Hatfield with Calpine, the developer for the
7 project.

8 MR. RUBENSTEIN: I'm Gary Rubenstein
9 with Sierra Research, and we're air quality
10 consultants for the project.

11 COMMISSIONER PERNELL: Thank you.
12 Staff?

13 MS. ICHIEN: Good afternoon, my name is
14 Arlene Ichien, I'm an attorney for the Commission
15 staff, and I'm sitting in for Paul Kramer today.
16 And I'll let the project manager introduce
17 himself, to my left.

18 MR. BARTRIDGE: Good Afternoon, my name
19 is Jim Bartridge, project manager for the Energy
20 Commission.

21 COMMISSIONER PERNELL: I'd like to also
22 introduce our Public Advisor. Most of you have
23 heard from her this afternoon, Ms. Margret Kim.
24 Margret, will you raise your hand? Margret has a
25 stack of blue cards. If you want to address the

1 committee please see Margret.

2 And with that I'd like to turn the
3 hearing over to our Hearing Officer, Ms. Willis.

4 HEARING OFFICER WILLIS: Thank you. Are
5 there any elected officials or agency
6 representatives here today? Sir?

7 MR. GIBBONS: Bob Gibbons with the
8 Romoland School District.

9 HEARING OFFICER WILLIS: Thank you.

10 COMMISSIONER PERNELL: Welcome Bob. Any
11 others?

12 HEARING OFFICER WILLIS: The purpose of
13 the conference today is to receive comments from
14 the parties as well as the public on the Presiding
15 Member's Proposed Decision.

16 The committee held evidentiary hearings
17 on July 30th, 2003. Briefs were then filed by
18 both parties, staff and Applicant. In addition,
19 letters were sent to the committee, the Puentes
20 sent a letter to the committee expressing your
21 concerns.

22 The committee published the Presiding
23 Member's Proposed Decision, also known as the
24 PMPD, on November 14, 2003, and it scheduled the
25 committee conference for today to discuss those

1 comments.

2 The PMPD was sent to all parties
3 interested agencies, and members of the public,
4 and published on the Commission's website. The
5 30-day comment period on the PMPD ends December
6 15, 2003.

7 Comments on the PMPD were required to be
8 filed by the Applicant and staff by November 25th,
9 2003. Both parties filed timely comments. In
10 addition, staff sent informal edits, such as typos
11 and other things that I've prorated on to the
12 Applicant.

13 During the conference the parties may
14 present oral comments on the Proposed Decision and
15 indicate the specific paragraph, sentence, and/or
16 condition they believe should be edited or
17 corrected. These comments must be based on
18 evidentiary record, and if you could cite to the
19 record if there is a need.

20 We will provide time at the end of each
21 presentation for the parties to ask questions or
22 clarify issues. The parties may also indicate if
23 they have any objections to any of the proposed
24 modifications.

25 But before we ask the parties for their

1 comments, we would like to begin with Public
2 Comment. And if we can start with John and
3 Melinda Puentes, I don't know if you want to speak
4 together or separately.

5 And Mr. Puentes, if you could please
6 restate your name and address for the record?

7 MR. PUENTES: Yes, I'm John Puentes, and
8 I live at 26851 Dawson Road, Romoland. I'm not
9 quite sure how to begin. I sent a letter to the
10 committee and hopefully it was all read. I read
11 most of this Presiding Members Proposed Decision
12 here, and I take it that most of my concerns
13 weren't recognized as being that important at the
14 conclusion of this report.

15 I saw that there's a couple of instances
16 where there might have been some text changes to
17 maybe address some of the visual impacts that the
18 site was going to present.

19 I'd like to just start with, when it
20 comes to public health issues, I just wanted to
21 ask a question of the parties here. Since it said
22 there won't be any significant effects or impacts
23 from this power plant, am I to take it that this
24 means that, even though they maintain the air
25 quality in this area -- which is a mouthful to

1 begin with -- if maintaining that is just, that's
2 acceptable?

3 In that it's not increasing the
4 pollution, and as long as it remains in the
5 current unhealthful condition and not increased
6 that that is what insignificant and non-cumulative
7 means?

8 COMMISSIONER PERNELL: I think the -- we
9 will let Mr. Rubenstein answer that question.

10 MR. RUBENSTEIN: Mr. Puentes, the air
11 district has two different types of regulatory
12 programs to deal with air pollution. One portion
13 of the program deals with new industrial plants
14 like this project. And there the objective is to
15 make sure that the plant doesn't make things any
16 worse.

17 The objective is not to make sure that
18 things get better, it's to make sure that things
19 do not get any worse. In parallel with that, the
20 air district has another regulatory program
21 covering all sources of pollution to make sure
22 that, over time, things in fact do get better.

23 So the upshot of all of it is that, over
24 time, things do get better. And for as bad as the
25 air quality may be here today, it's a lot better

1 than it has been, and it's going to continue to
2 improve, but there are no specific requirements
3 that any new project coming in, by itself, has to
4 make things better.

5 So in the context of your question about
6 what it means to not have a significant impact, it
7 truly just means to make sure that things don't
8 get any worse, taking into account existing air
9 quality levels and everything else that's going
10 on.

11 MR. PUENTES: So I take it that it's not
12 going to help improve the air quality, so it's
13 just going to go help maintain the current
14 unhealthful air quality?

15 MR. RUBENSTEIN: I think, and
16 Commissioner Pernell, let me know if you --

17 MR. PUENTES: Let me rephrase that. If
18 the plant wasn't built, would there be any
19 improvement in air quality?

20 MR. RUBENSTEIN: If the plant was not
21 built?

22 MR. PUENTES: Would I have worse air if
23 the plant wasn't built?

24 MR. RUBENSTEIN: No, you would not have
25 worse air if the plant was not built.

1 MR. PUENTES: And I'm not going to have
2 better air if it is built?

3 MR. RUBENSTEIN: That's right.

4 MR. PUENTES: So it's just adding to --
5 like, for example, if it wasn't built, whatever it
6 isn't working right now would still not be
7 working, but you're willing -- what it is is your
8 going to swap out pollution and keep it at a
9 certain level, correct?

10 MR. RUBENSTEIN: That's right. And for
11 some of the pollutants we have to swap out a
12 little bit more than what we emit, but that's to
13 make up for other, smaller facilities that don't
14 have to swap out at all because they're too small.

15 MR. PUENTES: All right. So the air is
16 not going to get better?

17 COMMISSIONER PERNELL: I think your
18 question is, if I have bad air quality, and then
19 you put in a plant, I mean hypothetically that
20 would increase the bad air quality. And what Mr.
21 Rubenstein is saying is that there are some
22 mitigated offsets that they're dealing with the
23 South Coast Air Quality District with.

24 So if you mitigate those impacts then it
25 should remain the same. And this is theoretical.

1 MR. PUENTES: So what I'm getting at
2 here is, it's not going to be helpful. It's not
3 helping, and it's technically not hurting is what
4 they're trying to say. Definitely not helping and
5 maybe not hurting.

6 COMMISSIONER PERNELL: It's not causing
7 any adverse impacts.

8 MR. PUENTES: Well, okay. It's
9 unhealthful to breathe the air now, and it's not
10 going to create any --

11 COMMISSIONER PERNELL: So what I'm
12 saying here is, I want you to -- I mean, I'm not
13 trying to rush you here, but basically the way the
14 Commission works is, if there's an adverse impact
15 the Applicant has to do something to mitigate
16 those impacts. So if you've got bad air quality,
17 you bring in something, theoretically it would
18 make it worse.

19 But they're doing, getting credits for
20 that adverse impact to the air quality. And
21 they're getting more than what's needed, so
22 theoretically it will clean up the air, but I'm
23 not ready to make that determination. But I want
24 you to understand the way it works.

25 MR. PUENTES: I understand. And I just

1 want to make sure it's clear that they're not
2 cleaning up the air.

3 COMMISSIONER PERNELL: I'm not sure
4 they're making that statement.

5 MR. PUENTES: Well, I just want it to be
6 -- because it comes out as clean burning, and all
7 this wonderful stuff, and --

8 COMMISSIONER PERNELL: I think the
9 point's well taken.

10 MR. PUENTES: On the subject of fines
11 for not going with the regulations or whatever
12 the --

13 COMMISSIONER PERNELL: Violations?

14 MR. PUENTES: Violations. How much are
15 these fines going to be, what's the range? Say,
16 for example, say when they're in operation and
17 they over-pollute, what's the general range of
18 fines? Because in the verbiage here it says it
19 can be anything from just saying "bad boy, don't
20 do it again" to revoking their certification.

21 For example, say they over-pollute for
22 two days. What can I expect? Are they going to
23 get fined?

24 COMMISSIONER PERNELL: Well, I know that
25 we have a compliance manager that's on the site

1 and that will be monitoring the site. And, you
2 know, I don't think that there's any written graph
3 that says if you pollute for one day it costs you
4 this much, a lot of that depends on the amount of
5 pollution.

6 So the compliance manager documents all
7 of that, and then it goes back to the Commission.
8 So I can't -- you know, you're asking me, if they
9 pollute for eight hours that's going to cost them
10 \$8,000. And it's not that rigid.

11 But we do have a compliance manager
12 during construction, as well as during operation.
13 And if you suspect that there's a violation you
14 can always call that compliance manager.

15 MR. PUENTES: Well, my point is that I
16 find that, after doing research on a lot of the
17 power plants and stuff, they're very forthcoming
18 when it comes to paying fines for doing all kinds
19 of things that aren't allowed. And my suspicion
20 is, my own personal suspicion is that because
21 they're making money and they can offset whatever
22 paltry little fine there might be with the revenue
23 that they're generating by overproducing or
24 overpolluting.

25 I have a question for Calpine. Can they

1 tell me, in the last ten years how many times they
2 have been fined for being in violation of things
3 that they've agreed with previously. And in
4 particular have they ever been fined for modifying
5 or doing unauthorized expansion of projects that
6 they were in control of?

7 Mr. WHEATLAND: Actually, I can't answer
8 that question today, because I haven't studied how
9 many times Calpine has been fined for other
10 projects. I don't represent Calpine for their
11 other projects.

12 There certainly is a mechanism in place
13 though that is very important to understand. With
14 each of the air quality districts, where they also
15 have their own enforcement mechanisms as well for
16 monitoring air pollution. But in terms of
17 specific fines in number, I can't answer that
18 question here today.

19 MR. PUENTES: Is the committee here
20 familiar with one of their plants called Los
21 Medanos, in northern California?

22 COMMISSIONER PERNELL: We are.

23 MR. PUENTES: It's my idea that some of
24 what I just described is a prime example of them
25 basically doing whatever they want to do, and

1 coming up with a check before you even ask for it,
2 and saying here's our fine, and we're sorry we
3 encroached on public lands, modified, whatever.

4 And here's your money, and since we
5 already did it I'm sure you're going to let us
6 continue to do it. So now they're a bigger,
7 better plant, instead of doing it the way it says
8 in this manual here.

9 COMMISSIONER PERNELL: Well I -- let me
10 just say that, and I need to say this to you as
11 well, because when we started these hearings, I'm
12 concerned about the Inland plant, and not any
13 other plant. And I've scolded Mr. Wheatlnad on
14 that as well.

15 But there is a mechanism in place. I
16 can't speak to what's happening with other plants
17 and what they're doing. I can tell you that there
18 has been an Intervenor who has come to the
19 Commission nad said they are in violation. And
20 that goes within the Commission, to investigate
21 that. And the Commissioners make a decision on
22 that.

23 And I would submit to you that that's
24 the way the process works. But I don't want to
25 get into what they've done on -- because our focus

1 is here on this project.

2 You have a PMPD, you live in the area,
3 if you have a suspicion that they're out of
4 compliance in any way, you can contact Ms. Kim,
5 and she will put you in touch with the compliance
6 people. I mean, that's kind of the way the system
7 works.

8 But I don't want to do a hypothetical to
9 say that "well, they've been doing that over
10 there, so they're going to do it here."

11 MR. PUENTES: Well that's not my point.
12 My point here is the only way I can tell a
13 person's future behavior is usually by their past
14 behavior. And it seems to me that if they do it
15 on a fairly regular basis before they build this
16 plant -- they're saying, all this here sounds
17 great if that's what they actually do.

18 But if in actuality they don't really
19 plan on going to the letter of the law on this
20 thing, and, depending on what the number crunchers
21 say, that this is what's going to be more
22 profitable then let's do whatever it is we're
23 going to do, because we're going to be going with
24 this system here that seems to be working for them
25 quite well.

1 COMMISSIONER PERNELL: Well, I mean, I
2 understand your thought process on this, but you
3 have to understand that the committee can't do
4 anything -- I mean, I can't go out and put
5 handcuffs on them because there might be a
6 violation, you know, so --

7 MR. PUENTES: Can they be put in a
8 situation where their fines will be a lot stiffer,
9 so it really is not in their financial best
10 interest to be in violation of anything? To where
11 it actually hurts their pocketbook? "Ooh, that
12 fine really hurt, we don't ever want to do that
13 again." As opposed to "we're still making a
14 profit, we can continue to do it, as long as we
15 play by whatever is in this --

16 COMMISSIONER PERNELL: Well, let me do
17 this, because I can't answer that question right
18 now. But I will put it down, take it under
19 advisement, but basically you're saying, because
20 of past practice the fines will be increased.

21 MR. PUENTES: Yes, kind of like
22 insurance embodies, saying you know what, you
23 guys, instead of having a clean record and getting
24 the low rate, you guys have the high accident rate
25 so you get the one that takes away your profit for

1 the year or whatever. And I'm sure that's a
2 better --

3 MS. ICHIEN: Commissioner Pernell?

4 Excuse me, Arlene Ichien here. If I may, I can
5 provide perhaps a little bit more information.
6 And that is, if this project were to be certified
7 by the Energy Commission, as Commissioner Pernell
8 has indicated, there is a compliance project
9 manager who is assigned to the project to follow
10 it and monitor it through construction as well as
11 through operation.

12 And in addition to the project manager
13 being assigned to the project, there remains a
14 team of technical staff available to review any
15 complaints or problems that are brought to the
16 compliance manager's attention.

17 In addition, the Applicant, the project
18 owner, is required to submit monthly or periodic
19 or whatever reports are specified in the
20 conditions of certification. To the compliance
21 project manager, to verify that compliance with
22 the conditions is continuing to occur.

23 There is also, for your information, a
24 provision in the Warren-Alquist Act, that governs
25 the Energy Commission, that does allow for the

1 Commission staff to impose civil penalties or
2 fines on an applicant or a project owner for
3 substantial non-compliance with a condition of
4 certification.

5 And in addition to the possibility of
6 imposing fines, there is also the possibility of
7 revoking a project owners license. That potential
8 exists in a provision of the Warren-Alquist Act,
9 and it requires that a hearing be held before the
10 Commission determines whether or not to impose the
11 fine, or go to the extreme measure of revoking a
12 license.

13 But for your information, those safeguard
14 provisions are available in the statute. And
15 there is a statutory limit on the level of fines
16 that can be imposed on an Applicant. But, for
17 your information, there is that provision in the
18 Warren-Alquist Act, and like I said, a compliance
19 project manager, you know, is assigned to monitor
20 the project through it's life, and is available to
21 receive complaints or questions of any sort that
22 residents or other interested persons might have
23 should this project be certified and go through
24 with construction and operation.

25 MR. PUENTES: Could you tell me how many

1 plants have had their certification revoked in the
2 last, I don't know, ten years?

3 MS. ICHIEN: So far we haven't had a
4 need to resort to that extreme measure. And that
5 may reflect upon the fact that they're haven't
6 been egregious violations.

7 MR. PUENTES: Yes, but -- so an
8 egregious one would have to be something like, I'm
9 only going to assume, that if they can modify and
10 build on their own without any Commission, and if
11 they can pollute I guess what's consider not that
12 bad of pollution that they never have to worry
13 about having their certification revoked?

14 MS. ICHIEN: I think it remains, because
15 it is based in the statute it remains a potential
16 hammer. So just know that it is there.

17 MR. PUENTES: A potential hammer, well,
18 a hammer that isn't used is not really a hammer.

19 The statistics that were used for just
20 about everything, when it comes to the
21 socioeconomic area of Romoland is based in 1999
22 and 2000 census. I know that, by daily reading in
23 the newspaper around here that population has been
24 growing at a rate of between 15 and 25 percent for
25 just the Riverside County area.

1 And I would submit that those statistics
2 that you are relying on are skewed at best,
3 especially when it comes to the minority
4 population. I wouldn't say there's segregation
5 going on around Riverside County, but if you want
6 to find Hispanics and Blacks, come to Romoland and
7 parts of Perris, and that's where you'll find the
8 majority.

9 That's just the way, I guess, it kind of
10 turned out. And a lot of poor people. It said
11 that there's a lot of pockets. Pockets, it's a
12 rural area, but I guess if you look at where the
13 people are, and they all turn out to be
14 minorities, I can't see there being no correlation
15 between that and the non-minority majority areas.

16 I looked on the map, and when you look
17 on the map, most of the areas that are usually
18 called mostly white usually have a handful of
19 people living in a large, multi-acre type of
20 residence. Whereas the highly minority areas, in
21 the dark green on your map -- even the 2000 census
22 can show you that.

23 But the numbers there have greatly
24 increased how, even with the new development,
25 Stonegate one and two. I would say at least half,

1 if not more, are in that area. And that's because
2 it's a more affordable -- it used to be more
3 affordable housing, but prices have gone up there
4 also.

5 HEARING OFFICER WILLIS: Mr. Puentes,
6 may I just address that? One of the findings that
7 we did have on page 311 was that the minority
8 population of Romoland was greater than 50
9 percent. That was a finding, that within one mile
10 of the site it was greater than 50 percent. It
11 was that, within six miles of the site it was less
12 than 50 percent.

13 MR. PUENTES: Within, say, a quarter of
14 a mile it's like 90 percent. As you get closer to
15 the plant the more minorities there are. As you
16 get farther away the less minorities there are.
17 And you can tell by the map, and I said it in my
18 letter, the alternate sites don't quite work out
19 that way, so that's why I think they weren't
20 picked.

21 Another reason why they're not being
22 picked is because most of the people, granted,
23 don't have any political power whatsoever.
24 Outside of the fact that they're poor and they
25 don't know English, many of them are resident

1 aliens.

2 So what the board of supervisors, in my
3 own opinion, have cooked up between themselves is,
4 since I've never heard the name -- Supervisor
5 Ashley, who's the actual supervisor for Romoland,
6 his name isn't bandied about because he doesn't
7 want to be know as the guy who volunteered his
8 little portion of the not in my backyard area, and
9 decided that Supervisor Venable would take the
10 hit, since he's no in that area and wouldn't have
11 to be politically liable for it, or at least in
12 whatever way they want to play their little
13 political game.

14 But you'll find that the people who I
15 have more concern with, which is the immigrants
16 who live in the trailer portion of the residential
17 area by the elementary school, right now they have
18 to live through being next to the waste treatment
19 plant. And they're going to be sandwiched between
20 the electrical plant and the waste treatment
21 plant.

22 So they get sick in the morning because
23 of the waste, and then they'll be having the
24 construction and everything happen near the
25 intersection, which is going to be used to do a

1 lot of the construction, which is nicknames blood
2 alley. It's not the safest intersection in the
3 world because there's no lights, and it's a curb,
4 and people go at high rates of speed.

5 And I found it very curious that, when
6 looking through the traffic, research into
7 traffic, it wasn't noted that it was an extremely
8 high incidence of traffic fatalities and
9 accidents. Mostly t-bones from people trying to
10 get across the road from Ethanac on to 74.

11 COMMISSIONER PERNELL: Mr. Puentes, let
12 me ask you a question. The people you're talking
13 about, I mean, are they not concerned as you are?
14 I guess my question is where are they? We sent a
15 staff person down, we received your letter.
16 You're one of the reasons we're here now, and I
17 don't see anybody.

18 I mean, I think that you're making a
19 good case, but my point is, you know, we've got
20 folks that are here, we've been having these
21 hearings, you know, the committee wants to
22 understand what your issues are, and I think you
23 do a good job of articulating those, but you keep
24 mentioning folks that are opposed to the plant or
25 adversely affected, and we've, I think, bent over

1 backwards to try and accommodate those folks as
2 well as yourself, and I just don't see them.

3 MR. PUENTES: Would bending over
4 backward include sending a person to the
5 neighborhood to knock on a door and say excuse me,
6 I'm with the CEC -- and of course have an
7 interpreter -- and --

8 COMMISSIONER PERNELL: Well, I think
9 bending over backwards is we received a letter
10 from you, which was in the form of a petition,
11 with names on it. We had someone from the CEC
12 contact you and say if you can get those --
13 somebody went around and collected the names -- so
14 if you can get those people into one place we'll
15 have somebody down here to listen to what their
16 concerns are. That person came, and I think they
17 came to your house.

18 MR. PUENTES: They told me that it
19 didn't matter how many people were there, that
20 they just wanted to come down and talk to us and
21 find out what our concerns were.

22 COMMISSIONER PERNELL: Right. so you
23 don't think that's --

24 MR. PUENTES: They didn't make it sound
25 like I had to have 100 people there. But to

1 answer your question about where these people are,
2 these immigrant people who are probably very leery
3 of the government to begin with, and --

4 COMMISSIONER PERNELL: Well, let me stop
5 you there. As I said before, we're concerned
6 about the power plant, we can't solve all of the
7 social ills. Believe me, I know what
8 environmental justice is, which is why we're here.

9 But you can't keep beating me up with
10 all of these people living right here, and I don't
11 see anybody. That's all I'm telling you. And if
12 I was a community activist -- that's how I started
13 out. But if the community is concerned,
14 regardless of whether they are immigrants or not
15 or can speak English or not, they'll be here.

16 Now all of them won't be here, and you
17 won't get 100, maybe you won't even get 50. But
18 you'll get more than two.

19 MR. PUENTES: Well, we didn't go out to
20 go recruit these people, that wasn't our
21 intention. We're not, my wife and I don't have
22 the sources or the time to devote our life to
23 doing the same thing that you're saying that you
24 don't have the time for. Evidently no one has
25 the time for these people.

1 COMMISSIONER PERNELL: But you're
2 speaking for them?

3 MR. PUENTES: Well, because I gathered
4 signatures, so I can tell you what they told me
5 when I gathered the signatures. The fact that I
6 don't bring them in here and parade them around
7 and say hey they don't want this stuff, when they
8 had a petition saying they don't want it.

9 I guess when you ask them can you come
10 down here and say you don't want it, well, I
11 thought we signed a petition that said we don't
12 want it. We'll have to go down there and talk to
13 these people.

14 COMMISSIONER PERNELL: All right.

15 MR. PUENTES: I thought that was the
16 point of the petition. But, like I said, if you
17 can send the Public Advisor over to my house and
18 address our concerns, I don't see what the harm
19 would be to send one person with an interpreter
20 just to take a sampling of the area. Or you can
21 just spend a day at the school.

22 COMMISSIONER PERNELL: But the harm is
23 we don't have the budget. We didn't even have the
24 budget to send that person. That's why I'm saying
25 we're bending over backwards here, so--.

1 What's your next issue?

2 MR. PUENTES: Well, that was my issues,
3 that that's what's there. That's the community
4 that's most affected. Where it says here it's
5 not, it's insignificant, that these people are not
6 to be considered that significant when it comes to
7 -- because it says there's not environmental
8 issues.

9 So they obviously don't qualify as being
10 an issue for this portion of the assessment. And
11 I'm saying they are.

12 HEARING OFFICER WILLIS: Well, just to
13 clarify. The conclusion was found that there
14 wouldn't be any adverse, unmitigated environmental
15 impacts on the project. That would be on anyone.
16 So that includes the group that you're talking
17 about, the group that's six miles away, five miles
18 away, four miles away, wherever.

19 MR. PUENTES: But I always thought the
20 environmental impact thing was to supposed to put
21 into relation the amount of minorities and poor
22 people that are in there. Otherwise --

23 HEARING OFFICER WILLIS: But that was
24 included in the --

25 MR. PUENTES: Well, what I'm saying is

1 otherwise, if they were all poor minorities it
2 still would be the same then, wouldn't it.
3 Because evidently they're not polluting enough to
4 be an impact to anybody, so there isn't really a
5 reason to have this, if it's a project like this
6 one. This is just a formality then.

7 COMMISSIONER PERNELL: I think you're
8 confusing environmental impact with environmental
9 justice.

10 MR. PUENTES: Yes, that's what I'm
11 saying, environmental justice.

12 COMMISSIONER PERNELL: Okay,
13 environmental justice, we have a guideline that we
14 have to go in a six mile radius. We can't pick
15 and choose and do a half a mile out just because
16 they're lower income people there. We have to do,
17 it's a guideline that came down from the federal
18 government saying you will do a six mile radius.
19 That's what we have to do.

20 MR. PUENTES: And according to the six
21 mile radius you've whittled it down to being
22 pockets of minorities. And the reason why it's
23 pockets is because that's where they put them.

24 HEARING OFFICER WILLIS: But regardless
25 there still, the conclusion was that there was not

1 a disproportionate impact on low income and
2 minorities. So regardless of who lives a half a
3 mile from you there's still not a disproportionate
4 impact on those people.

5 MR. PUENTES: But economically wouldn't
6 it be?

7 HEARING OFFICER WILLIS: Well, we're
8 talking about environmental impacts from the
9 project. Like Commissioner Pernell said, we're
10 not talking about all the social ills of --

11 MR. PUENTES: I was just talking about
12 environmental justice, not the environmental
13 impact.

14 HEARING OFFICER WILLIS: Well, that's
15 what we're dealing with, the environmental impact
16 on this community and within six miles of the
17 community.

18 MR. PUENTES: And the environmental
19 justice portion is within that six miles, and it
20 doesn't really matter. Say, for example, if my
21 house isn't worth as much being next to it, and
22 we're all minority and poor, whereas the guys who
23 live six miles away no one really knows about it,
24 so they're not really as impacted.

25 So that doesn't go with the equation.

1 It's just the six mile radius, and how many people
2 are in there, and how many are poor.

3 HEARING OFFICER WILLIS: We looked at
4 the public health impacts, and other environmental
5 impacts, and those additional impacts -- there's
6 about 21 areas of impacts that we looked at.

7 MR. PUENTES: And all that affect the
8 people who are closest the most. And the people
9 who are closest, who are affected the most, happen
10 to be minority and poor. The closer you get to
11 it, the more you're affected by it. That's just
12 the way it is, visually and socioeconomically.

13 And when I say socioeconomically I mean
14 that it doesn't take a rocket science, like I said
15 in my letter, to say the closer you are to the
16 plant the less people are going to want to live
17 there. Can we agree on that?

18 I mean, are there people out there who
19 want to buy my place because it's next to --

20 HEARING OFFICER WILLIS: You're free to
21 state your opinion, I'm telling you what the
22 document states, and the conclusions thereof.

23 MR. PUENTES: All right. Can she say --

24 HEARING OFFICER WILLIS: Would you state
25 your name for the record?

1 MS. PUENTES: Melinda Puentes. All I
2 wanted to know is -- this may be more of a
3 request. The trees that are going to help with
4 the visualization of the plant. I notice they
5 want mature trees. I was wondering if that could
6 be changed --

7 MR. PUENTES: Mitigated, instead of
8 waiting until we're 60, could we get them
9 mitigated until we're like 45 or 50.

10 HEARING OFFICER WILLIS: I think I don't
11 know how old you are at this point, so I can't
12 tell you.

13 MR. PUENTES: Well, I'm 40, so I'm
14 figuring five or ten years, as opposed to ten or
15 20.

16 COMMISSIONER PERNELL: Mr. Wheatland,
17 can you address the visuals with the trees, what
18 type, how fast they grow?

19 MR. WHEATLAND: Well, the trees that are
20 chosen are ones that provide the maximum growth.
21 Our experience has been that if you plant a mature
22 tree, a fairly mature tree, it's not going to grow
23 that quickly. That the smaller trees are actually
24 going to reach that height much faster because
25 they will develop a root system.

1 So simply taking a tree out of the box
2 and sticking it into the ground -- it may be very
3 large, but it doesn't ensure rapid growth. So the
4 trees that are chosen are the ones that we hope
5 will give the maximum growth possible, and develop
6 a root system and be able to be there for a long
7 time.

8 MS. MORRIS: I'm Jenifer Morris, and I'm
9 the environmental project manager for Calpine. We
10 put a lot of energy into landscape planning for
11 this, and that's actually part of the public
12 record.

13 But we hired a local landscape architect
14 who has done a lot of work in this area, and
15 specifically came up with a species of tree that
16 would grow at almost ten feet per year.

17 So, to address exactly your concern that
18 you wouldn't be 60 when the impacts are mitigated.
19 We, basically found the fastest growing tree that
20 we could come up with.

21 MR. PUENTES: What I was told wasn't
22 exactly the way she said it. But what I gathered
23 was that, because the original assessment here was
24 changed to delete the time limit of five years and
25 to change it to whenever is realistically

1 feasible, that type of language, which meant that
2 you could take basically, you can grow whatever
3 tree there as long as it normally grows, it's
4 going to take however long it's going to take
5 which is what consider probably going to be way
6 more than five years, because I was told by some
7 of the Calpine representatives, which I put in my
8 letter, that they gave me a picture of what it
9 would look like 20 years from now, and that's when
10 it would be finished growing and reach it's -- the
11 trees would reach their maturity.

12 So in order to mitigate, I'm still stuck
13 with, because she didn't give me how many years
14 it's going to take. Okay, You start out at a two
15 foot tall tree, and again I'm up to 20 years
16 again. Fine, it's the fastest growing tree.
17 Well, obviously there's some other way they need
18 to mitigate it in stead of growing trees.

19 Maybe it's a higher berm, instead of six
20 feet tall make it 20 feet tall, I don't care what
21 it is, but to sit there and tell me okay, you've
22 got the fastest growing tree, it's still not going
23 to help me from seeing your plant for what is
24 going to be probably a good chunk of my life.

25 COMMISSIONER PERNELL: Okay. All right.

1 So we've got the issues of the trees. Is there --

2 MS. PUENTES: The elementary school that
3 is there, the Romoland Elementary School, I was
4 just concerned with, if there's an accident at the
5 plant if there's some kind of alarm that goes off,
6 mainly -- not just for the residents, but for the
7 elementary school children, if there's some kind
8 of alarm that goes off. If they overpollute is
9 there any kind of announcement that is made?

10 COMMISSIONER PERNELL: Normally there
11 would be a evacuation plan and etc. for the
12 facility. Nut in terms of how you communicate
13 with schools, if there's a emergency, I think
14 that's the question.

15 MR. WHEATLAND: Well, the short answer
16 is no, there isn't an alarm system for the school,
17 because no one during the course of this two year
18 proceeding suggested a circumstance where there
19 would be any kind of emergency that would threaten
20 the school in any way that would require immediate
21 evacuation.

22 COMMISSIONER PERNELL: If there were,
23 how would that, have you thought about hay would
24 handle that? If there was a chemical spill at the
25 plant where you had some vapors -- and I'm doing a

1 hypothetical here because I'm trying to get to
2 your point.

3 The question is do you call the
4 school, the school district, the fire department?

5 MR. WHEATLAND: Well, there are
6 protocols for who we would call in the event of an
7 emergency. Just to be clear, though, when we did
8 the analysis of issues such as chemical spills, we
9 always tried to find a situation where there would
10 be containment within the fence line of the
11 facility.

12 But if there was some emergency that
13 would affect a broader part of the community there
14 are protocols that will be in place as part of our
15 monitoring. We have plans that we will be filing
16 as part of our monitoring plans, to notify the
17 appropriate public safety officials within that
18 immediate area, whether that be the police
19 department, the fire department, or the people who
20 deal with hazardous material spills.

21 MS. PUENTES: If there is a lot of
22 pollution for whatever reason, how are the
23 residents notified, like to stay in their home, to
24 keep inside their home? I mean, I'm sure you
25 would be able to see it maybe outside, but --

1 COMMISSIONER PERNELL: Well, I think
2 that, probably the same answer would be, what they
3 would do is, depending upon what the emergency is,
4 the proper emergency departments. So if it's fire
5 or police, or if it's hazmat. But that's a plan
6 that they are going to have to submit to the
7 Energy Commission.

8 MS. PUENTES: And just one more
9 question. Is there any plans, right around the
10 plant there's a lot of dirt roads. I was just
11 curious if there's any plans to mitigate the
12 pollution from the construction to pave those
13 roads, or --?

14 MS. MORRIS: For the parts of the roads
15 that we will be doing during construction we are
16 doing an initial gravel -- we're laying down gravel
17 so there won't be dust during construction, and
18 then --

19 COMMISSIONER PERNELL: Well, gravel's
20 going to give you some dust. So you might want to
21 rephrase your statement.

22 MS. MORRIS: To mitigate construction
23 dust and keep it under control there's a whole
24 mitigation section in the traffic plan that
25 includes putting gravel on Antelope at the

1 beginning of the project, and then it will be
2 paved. And that's the main access to the site.

3 MR. PUENTES: Okay. So that's basically
4 the only area, you're planning on paving the road.

5 MR. PUENTES: Is the main access -- when
6 you say "Antelope" is it coming off 74?

7 MS. MORRIS: No, construction access
8 will be via Ethanac.

9 MR. PUENTES: So Ethanac to Antelope?
10 So you don't plan to have any trucks or anything
11 going on from 74 to Ethanac?

12 MS. MORRIS: Our conditions actually are
13 very specific, that access is Ethanac to Antelope.

14 COMMISSIONER PERNELL: I hope you're
15 going to be --

16 MR. PUENTES: I'm trying to be a little
17 quicker. If I can get to my main points here. In
18 your assessment here it says that -- and I'm going
19 to rehash a little bit of it -- because it says
20 the Applicant and Energy Commission staff worked
21 wit the community of Romoland. I guess that's me
22 and Melinda.

23 COMMISSIONER PERNELL: No, it said
24 community, that means more than two people.

25 MR. PUENTES: I understand, but I find

1 it, I don't know who the other people are.
2 There's the Romoland Community Council, is that
3 the community that we're talking about?

4 MS. MORRIS: Staff and Applicant, the
5 process began several years ago, so I can't tell
6 you who exactly they met with and talked to. But
7 they have included the community of Romoland in
8 their workshops and notices.

9 MR. PUENTES: Okay, but like we said
10 earlier in our letter, the first time I heard
11 about it was in July of this year, and I'm new to
12 the community. I've only been here for about a
13 year. So maybe the process of talking to people
14 who -- I don't know if they're still here, or if
15 they moved, or anything like that, but the people
16 who are here now, in the petition I had over 95
17 percent who said no, they didn't want this thing.

18 And if that's what you came away with
19 when you talked to the community before -- because
20 I don't know what happened before, and I'm sure
21 you guys may not have been around a couple of
22 years ago or whatever, when this thing started.
23 But I don't see that as being very accurate today.

24 HEARING OFFICER WILLIS: Well, Mr.
25 Puentes, the best we can do is offer our Public

1 Advisor, our staff -- I know Calpine, the
2 Applicant, held public hearings here, and had a
3 site visit, and a workshop here as well, I think
4 it was in January, almost two years ago.

5 So the Energy Commission group for this
6 project has come down to the community quite a
7 number of times. And the community has been
8 invoited, has been noticed. There's been notices
9 in the newspaper -- in fact there was one for the
10 last hearing as well. So, the original notice
11 that was put out was put out in Spanish as well.

12 It was put into the newspaper and
13 circulated with the newspaper. So we can't make
14 people come to the meetings, we can't go door to
15 door. Unfortunately we just can't do that. But
16 we can open these meetings up to the public, as we
17 have done. And if people aren't willing to come
18 then that is their choice.

19 MR. PUENTES: Well, what are we left
20 with say -- because this is all new to me and I've
21 never done this before, and I didn't know that,
22 this is basically becoming my job, to do this.
23 And there isn't anybody else who has this job,
24 evidently.

25 So the fact that I've learned about it

1 in July, and I work and go to school. I don't
2 have a lot of free time, but I've made enough time
3 to do what I've done. And so, what can I do --
4 what I'm being told is if I get the community to
5 come in and say "here we are" as opposed to
6 signing a piece of paper and saying this is what
7 we think, is that going to hold more weight with
8 the committee?

9 What I'm trying to say is, is it worth
10 my effort to get these people in and say you know,
11 we really don't want it, and we don't know about
12 it because, first of all we don't subscribe to the
13 paper, and we just don't do things like that.

14 And don't get me wrong, there's a lot of
15 different things that do go on, and I'm not --

16 HEARING OFFICER WILLIS: I do, we
17 appreciate your comments. I'm not sure that we
18 can solve that particular issue of, if they're
19 moving in or out, or if they haven't lived here or
20 what.

21 This project has been going on for the
22 last couple of years, so it has been noticed, and
23 people have been notified, and the community has
24 been notified over the past couple of years that
25 there is, that this project has been proposed.

1 At this point, we are, we do have the
2 preliminary decision, we're here to make comments
3 on that decision, and then it will be heard in a
4 few weeks at the business meeting in Sacramento.

5 MR. PUENTES: Okay. So this is it.

6 HEARING OFFICER WILLIS: I believe this
7 will be the last time that we'll be down in the
8 community for this particular document. If you
9 have any other comments on the substance of the
10 document I'd appreciate that. We're going to need
11 to move on quickly. It's going on almost an hour
12 here.

13 MR. PUENTES: All right, quickly, it's
14 -- how did this committee find that it's going to
15 provide economic benefits? Number one being jobs,
16 because it says here 23 jobs for the community. I
17 guess the community being the county? Or would it
18 be Romoland? Which community are we talking about
19 that the 23 jobs are going to go to?

20 COMMISSIONER PERNELL: My understanding
21 is that's what it takes to, certainly it's going
22 to take more than 23 jobs to build the project.
23 So I'm assuming that 23 is operation en masse.

24 MR. PUENTES: Yes, that's what I'm
25 talking about. Because it says here that the two

1 years it's going to take is an insignificant
2 amount of time, and it's not really something that
3 the council heard that the committee here regards
4 as being a significant impact, because of it's
5 short duration of two years.

6 HEARING OFFICER WILLIS: That's just for
7 the construction and air quality impacts.

8 Obviously if somebody is working for two years or
9 air quality impact, that may be an impact to the
10 economy.

11 MR. PUENTES: Okay, the economy is good
12 but the pollution is insignificant? The two years
13 it's going to be built, and causing --

14 HEARING OFFICER WILLIS: Did you have a
15 question? We could spend all day arguing --

16 MR. PUENTES: Well, my question is, I
17 understand that it's a job thing, I understand
18 that. But the community of Romoland isn't going
19 to see any of it. I don't even see it sending
20 anybody --

21 COMMISSIONER PERNELL: But understand
22 what, our task as the Energy Commission is not to
23 tell the employer who to hire, when to hire him,
24 and who to fire. What we do is license power
25 plants. My suggestion is to have a dialogue with

1 the Applicant and talk about the skills of the
2 community and whether they can participate in that
3 project.

4 But we're not the ones to do that. We
5 can't tell -- I can't tell you who should be
6 working for you, and you wouldn't want me to. I
7 would suggest you talk to the Applicant on the
8 employment situation. I'm sure they have a, are
9 very mindful of the community and its economic
10 needs, so this would be an economic benefit.

11 MR. PUENTES: I believe I was told
12 earlier, at the last meeting, that in order to get
13 any kind of improvements to the committee and
14 things like that, to go through the county, and go
15 through the normal chain that normal people do for
16 getting funds and things from the county.

17 In other words, the county is going to
18 collect all the money, and spend it the way
19 they're going to see fit.

20 COMMISSIONER PERNELL: I would just say
21 that you do have local political organizations.
22 You have county agencies and etc. And, you know,
23 those are some of the agencies you can talk to
24 about some of the problems. But we're here to
25 license a project.

1 MR. PUENTES: Yes. And my next area is,
2 on the security plan, I didn't see any terrorist
3 kind of information on it. No addressing the
4 possibility if you had a terrorist who wanted to
5 create damage or --

6 COMMISSIONER PERNELL: Mr. Wheatland can
7 address that, because I do believe the state --

8 MR. WHEATLAND: Well, we will be filing
9 a security plan. Mr. Puentes hasn't seen it
10 because it won't be a public document, subject to
11 public review. But it will address all those
12 important issues.

13 MR. PUENTES: Because when I read the
14 thing it said it's going to have a chain link
15 fence around it and things like that, and it
16 didn't seem that it would be that --

17 HEARING OFFICER WILLIS: I think it does
18 say that there will be a security plan. And
19 unfortunately there are some documents that are
20 not public documents because of the
21 confidentiality of, the nature of the topic.

22 MR. PUENTES: Okay. Now it says that
23 they have the option of having a recording in
24 their complaint department. And I'd ask that that
25 be a 24-hour manned post, only because I don't

1 think that the people should have to wait
2 overnight or however many hours before somebody is
3 informed of, say, a violation or a nuisance. And
4 thank you for your time, I appreciate your
5 patience.

6 COMMISSIONER PERNELL: Well, thank you,
7 and we do have some suggestions, and I'll take it
8 back to the full committee. And as I say, this
9 will be going to the full Commission on the 17th.

10 MR. PUENTES: I appreciate it. One last
11 thing, about the intersection, if you could have
12 somebody look into that 74/Ethanac thing, because,
13 I don't know, there's a lot of accidents there,
14 and if there was an accident with a truck or
15 something, especially that aqueous ammonia thing,
16 that's real close to the school. All right,
17 thanks.

18 COMMISSIONER PERNELL: All right. Thank
19 you.

20 HEARING OFFICER WILLIS: Thank you. Mr.
21 Gibbons?

22 MR. GIBBONS: My name is Bob Gibbons,
23 I'm a member of the Romoland School District --

24 COMMISSIONER PERNELL: Good to see you
25 again, Bob.

1 MR. GIBBONS: I'm speaking on behalf of
2 the Harvest Valley citizen's patrol and the
3 Harvest Valley Community council, as a
4 representative from them. I want it understood
5 that I'm not speaking on behalf of the school
6 district at all.

7 And I would encourage this young
8 gentleman and his wife to come to one of our
9 council meetings, because we discuss this all the
10 time. And I would welcome him to come to a
11 meeting. The third Tuesday of every month, and
12 this way I get to advertise also.

13 COMMISSIONER PERNELL: Well, you're on
14 record, so --

15 MR. GIBBONS: I'm here on behalf of our
16 community, and we have quite a number of them here.
17 Would our community please stand up and let them
18 know who we are. And I'm speaking on behalf of
19 some of these people.

20 We have approximately 220 members in our
21 community council, and our community council
22 represents Romoland, Homeland, and Green Acres
23 area. So it's quite a large area.

24 We have talked about this program for
25 years. I've been up in front of you for years

1 speaking on behalf of it. I have done a little
2 investigation. I just came back from Yuba City,
3 and there's a power plant up there. I believe
4 Calpine has one up there.

5 My grand-daughter goes to school
6 approximately three blocks from that power plant.
7 Power plant is almost in the middle of town. I
8 walked around this power plant, it's a 500
9 megawatt power plant. I hear no noise, I see a
10 little steam coming out of the chimney, or the
11 stack.

12 I see no problem. I've asked my son and
13 my grand-daughters if they've had any ill effects
14 from any of this, and there is none. That plants'
15 been there for, I don't know how many years it's
16 been there, but it has been there for some time as
17 I understand it.

18 With that, I'm all in favor of this
19 plant going in. We need the prosperity of the
20 community. The gentleman spoke about some of the
21 indentured people here. With this plant going in
22 we're going to find jobs in this community.
23 That's where some of these people are going to go
24 to work.

25 Some of these new people, buying new

1 homes, are going to come in and they're going to
2 have jobs in this area. We want some jobs for our
3 people, we want our prosperity to grow, we want
4 our property values to go up. We can't do this
5 without a tax base, and this plant is going to
6 give us a tax base.

7 And I feel that this is one of the
8 strongest issues that we need to address in our
9 community. And that's why I'm here, speaking on
10 behalf of the power plant. Thank you for your
11 time.

12 HEARING OFFICER WILLIS: Is there any
13 other public comment before we move on to the
14 Applicant? Hearing none, Mr. Wheatland, if you'd
15 like to begin. And just for your notification,
16 the majority of your comments we've just taken in.

17 The questions I guess I have are in the
18 compliance and closure section, and on noise and
19 vibration I just wanted to verify with the staff
20 if they were okay with those sections, but other
21 than that I don't think I have, I don't personally
22 have any questions. So feel free to move on as
23 you wish.

24 MR. WHEATLAND: Thank you. My comments
25 will be very brief. We wish to thank the

1 committee for preparing a very well-reasoned and
2 comprehensive decision. We are very pleased that
3 the proposed Decision recommends approval of the
4 Application for Certification for this project.

5 The Proposed Decision contains many
6 conditions of certification. The Applicant is in
7 substantial agreement with each of the proposed
8 conditions. As you mentioned, we have proposed a
9 few minor points of correction or clarification.
10 These points of correction or clarification are
11 not intended to make any substantive change in the
12 decision, but are more of a cleanup nature.

13 I'm please to answer, and the people
14 that are with me today are pleased to answer, any
15 questions you may have regarding our proposed
16 changes, but I think since you have read them
17 there's no need for me to repeat them here this
18 afternoon. Thank you.

19 HEARING OFFICER WILLIS: Thank you. If
20 you could turn to page three of your comments.
21 And the first one referred to page 36, Com 8. And
22 can you, I just didn't quite understand it. Were
23 you trying to replace hazardous materials in the
24 third line of that first paragraph?

25 MR. WHEATLAND: Let me check. Yes,

1 that's the line that --

2 HEARING OFFICER WILLIS: And that would
3 be replaced with acutely hazardous materials, the
4 same as in in the other parts of that other
5 condition?

6 MR. WHEATLAND: That's correct. And
7 that's a condition that the staff has agreed to in
8 other proceedings that deals more specifically
9 with the types of materials with which we will be
10 concerned.

11 HEARING OFFICER WILLIS: Mr. Bartridge,
12 do you have any comments on that? is that
13 agreeable to staff?

14 MR. BARTRIDGE: That's acceptable to
15 staff.

16 HEARING OFFICER WILLIS: Thank you. The
17 staffing question I had then is on Com 15. We
18 would request that the final Decision expressly
19 offers a list to be expressed in formalistic
20 terms, as the staff agrees may be necessary. Do
21 you have a specific language that you're
22 proposing?

23 MR. WHEATLAND: No, we didn't have
24 specific language for that one. And it may be
25 sufficient simply for the committee to note that,

1 in a revision to the PMPD text, without actually
2 changing the actual condition, if that
3 clarification is noted in the text, that would be
4 acceptable to the Applicant.

5 HEARING OFFICER WILLIS: So, by --

6 MR. WHEATLAND: By formalistic terms,
7 this was a suggestion that actually was made by
8 staff's brief in this proceeding. Rather than
9 saying, for example, that a certain milestone is
10 to be met by a date certain, like March 5th of
11 2005, it would be stated and said as the milestone
12 would be met, for example, 60 days after the
13 authority to construct is issued. That's what we
14 were tending to indicate by a formula approach.

15 HEARING OFFICER WILLIS: Does staff have
16 any comments on that?

17 MS. ICHIEN: The staff doesn't have any
18 objections for allowing for milestones to be
19 established in what's referred to as formalistic
20 terms. Meaning that, it's likely that milestones
21 will be pegged to the issuance of the authority to
22 construct. We don't know exactly when that's
23 going to take place.

24 So the staff is amenable to having
25 milestones, or wording allow for milestones to be

1 set, based on X days from the issuance of the ATC.
2 And then X plus Y days from the first milestone.

3 HEARING OFFICER WILLIS: So would a
4 sentence "milestones shall be expressed in
5 formalistic terms as being necessary" or something
6 to that effect?

7 MS. ICHIEN: Or "may be expressed in
8 formalistic terms as necessary", just add that as
9 a sentence?

10 MR. WHEATLAND: Yes, please.

11 HEARING OFFICER WILLIS: And second
12 comment that you had was, in addition to, let's
13 see, I think that's page 46, "and any extension of
14 that deadline granted by the air district
15 executive officer." Does staff have any comment
16 on that one?

17 MS. ICHIEN: Yes, the staff does object
18 to the addition of that wording to Com 15. And at
19 your pleasure I am prepared to go over that when
20 it is the staff's turn to provide comments.

21 HEARING OFFICER WILLIS: Do you want to
22 discuss that now, Mr. Wheatland, the reasoning for
23 that?

24 MR. WHEATLAND: Yes, please. The
25 reasoning for it is that we thought this was

1 already contemplated within the existing
2 condition. We thought it was an implicit part of
3 the condition, and we were here only trying to
4 make it explicit, we weren't trying to change
5 anything.

6 But we read the general condition here
7 as permitting that possible extension, and that
8 was the reason for our clarification.

9 MS. ICHIEN: The staff would object to
10 the wording. We think it is unreasonable in
11 allowing for milestones to be established in
12 compliance with "any extension of that deadline"
13 referring to the three year deadline under Rule
14 1309.1 granted by the air district executive
15 officer.

16 The deadline, number one, has yet to be
17 set. That depends on when the authority to
18 construct is issued. And we think it would be
19 unreasonable and premature, overly speculative, to
20 allow milestones to be based on an extension of a
21 deadline that is yet to be determined.

22 The way Com 15 is currently written, it
23 does not preclude the Applicant from seeking an
24 extension from the air district in the future,
25 depending on what the situation is in the future.

1 And the staff recognizes that the air district's
2 rule 1309.1 does allow for the project owner to
3 request an extension.

4 So, while we acknowledge that Rule
5 1309.1 allows for the possibility of an extension,
6 we think it is unnecessary to add the wording "to
7 that effect", and moreover, believe that adding
8 that wording would be inconsistent with the main
9 purpose of Com 15, which is to establish
10 milestones that show the progression of
11 construction to operation once the authority to
12 construct is issued.

13 And in addition, we think that Com 15,
14 as currently written, provides for flexibility in
15 allowing for the slippage of milestone dates, or
16 for even changing milestones altogether, with
17 concurrence from the compliance manager.

18 HEARING OFFICER WILLIS: Any rebuttal?

19 MR. WHEATLAND: Well, not so much
20 rebuttal, but just a bit of confusion, because Com
21 15, as I understand Ms. Ichien, Com 15 would allow
22 the Applicant to establish preconstruction and
23 construction milestones consistent with Rule 1309.

24 And 1309 permits the Applicant -- if I
25 understand Ms. Ichien -- that rule permits the

1 Applicant to seek extensions of the deadline by
2 applying to the air district executive officer.

3 So it seemed to us the language would
4 allow both the establishment of initial
5 preconstruction and construction deadlines, and
6 would allow the Applicant to seek the extension.
7 That was the reason for our clarification.

8 HEARING OFFICER WILLIS: Okay, thank
9 you. I'm going to move on to page 167, it was the
10 hazmat, I guess it was an incorrect number of
11 12,000 cubic feet of hydrogen gas. It should be
12 160,000. Am I reading this correctly?

13 MR. WHEATLAND: Yes.

14 HEARING OFFICER WILLIS: So that's what
15 the change should be, and that's how it was
16 evaluated, if you know, Mr. Bartridge? The
17 original number was based on a section of the AFC.
18 I just wanted to make sure the staff was aware
19 that that number was incorrect.

20 MR. BARTRIDGE: I think that change is
21 acceptable. I do believe that 12,000 is
22 excessive, and that it should be 1,260 SCF.

23 HEARING OFFICER WILLIS: So, in the
24 sentence, just to make sure we're converting it to
25 the correct --

1 MR. WHEATLAND: I'm going to ask for
2 help on this one. Introduce yourself, Jim.

3 MR. MCLUCAS: I'm Jim McLucas, project
4 engineer for Calpine. And the correct number is
5 the 126,000. And in the AFC, in the text I know
6 it said the lower number, and in the AFC Table
7 3.4-7 it has the correct number.

8 HEARING OFFICER WILLIS: Right. And SCF
9 is --?

10 MR. MCLUCAS: Standard cubic feet.
11 Which is a little bit misleading if you think
12 about how big a cubic foot is. Because this
13 really is the amount of gas if it were at standard
14 conditions, which is under ambient temperature and
15 pressure. And the way it's stored will be on the
16 tube trailers.

17 And so this is one trailer that has up
18 to ten of these long, cylindrical tubes on it.
19 And it's stored under pretty high pressure there,
20 two thousand some odd pounds. And so therefore
21 the actual cubic feet of the storage vessels is
22 much, much smaller. It's nowhere near 126,000
23 cubic feet.

24 But the amount of gas that's inside
25 those, under standard conditions, if it were

1 allowed to expand, would occupy 126,000 standard
2 cubic feet. We could represent it as pounds,
3 which would be maybe more intuitive, if that would
4 help.

5 I'm pretty sure that our table 3.4-7 is
6 duplicated in the FSA somewhere, isn't it?

7 MR. BARTRIDGE: I don't have the FSA
8 with me.

9 HEARING OFFICER WILLIS: Perhaps the
10 staff could accept it subject to check. That
11 would be fine. I just wanted to make sure that
12 that amount is what was analyzed. And I wasn't
13 quite clear from reading the staff assessment that
14 that was the case.

15 Can we go back to air quality. I want
16 to make sure, both staff and Applicant noted a
17 correction on the NOX limit, and I just want to
18 make sure that it's worded properly. It's 2.0
19 PPM, one hour basis. It's on page 115.

20 The staff had added, had crossed off "an
21 annual average basis of 2.5 PPM" and then added
22 the CO concentration change. I wanted to check
23 with Applicant, if that language would be okay.
24 Or if you have some comments on that?

25 MR. RUBENSTEIN: Gary Rubenstein of

1 Sierra Research, on behalf of the Applicant. The
2 staff's proposed corrections are fine with the
3 Applicant.

4 HEARING OFFICER WILLIS: Thank you.

5 HEARING OFFICER WILLIS: And then
6 referring to, I think it's finding 13 on page 122.
7 You both had a little different take on that.
8 Applicant, would staff's version be acceptable on
9 that, or do you have other comment?

10 MR. RUBENSTEIN: Again, the staff's
11 proposed changes are fine with the Applicant.

12 HEARING OFFICER WILLIS: And I think the
13 last question I had was on noise. Referring to
14 287 of the staff uses of potential significance
15 threshold, and then 294, the suggested qualifier
16 of "noisy" be added before construction. And then
17 294, "this avoids potential significant adverse
18 impacts."

19 I just wanted to ask staff if there are
20 any issues with making those changes?

21 MS. ICHIEN: Staff has no objections to
22 that.

23 HEARING OFFICER WILLIS: Is there any
24 further comment that Applicant would like to make?

25 MR. WHEATLAND: No. We would like to

1 respond, just to give you some information on the
2 hydrogen number in the FSA.

3 MR. RUBENSTEIN: There is a table 3.4-7
4 that's in the FSA. It's on page 5.4-30, and in
5 that table the quantity that's shown as the
6 maximum quantity onsite for hydrogen gas is
7 126,000 cubic feet, and in parentheses it says
8 "approximately 665 pounds."

9 MR. WHEATLAND: And that completed our
10 comments on the PMPD.

11 HEARING OFFICER WILLIS: Thank you very
12 much. Is there any public comment on those
13 comments before we go forward? Hearing none, why
14 don't we just turn to staff. Ms. Ichien?

15 MS. ICHIEN: Thank you. First of all,
16 on behalf of staff I'd like to commend Ms. Willis
17 and the committee for issuing a Presiding Members
18 Proposed Decision that does reflect careful
19 thought in your decisions. Staff didn't
20 necessarily agree with every last decision that
21 you arrived at, but nevertheless we do recognize
22 the careful thinking that went into the document.

23 We filed our written comments on
24 November 25th, and I just want to make brief
25 comments with respect to two matters.

1 The first one has to do with the RTC's,
2 the reclaimed credits. Based on the reasons that
3 we included in our written comments, staff
4 continues to believe that the offsets or the RTC's
5 for NOX emissions are not sufficiently identified.
6 Preferring instead to have, for example, option
7 contracts be available to identify with more
8 specificity the credits that the Applicant is
9 intending to use.

10 Nevertheless, in the event that the
11 committee continues to find that sufficient
12 specificity was provided based on the Cantor
13 fitzgerald letter, as indicated in the current
14 PMPD, we respectfully ask that the committee
15 include a statement that specifically restricts
16 reliance on the Cantor Fitzgerald letter to the
17 RTC's in this case.

18 And with respect to the particular facts
19 and circumstances of this case. I think that's
20 implicit in the decision, but I think it would be
21 helpful to clarify in an explicit statement that
22 the decision reached with respect to specificity,
23 relying on that letter, is limited to the
24 particular facts and circumstances of this case,
25 and in particular to the RTC's in the South Coast

1 District.

2 And the second matter with which I'd
3 like to provide comments briefly has to do with
4 staff's Condition AQSC5, which the PMPD chose to
5 delete from the list of proposed conditions of
6 certifications.

7 Staff strongly recommends that the
8 committee reconsider and include AQSC5, which
9 would require the monitoring of construction PM-10
10 emissions in the condition for certification for
11 the facility.

12 The Presiding Members Proposed Decision
13 has acknowledged that existing concentrations of
14 PM-10 already exceed both federal and state
15 ambient air quality standards. And although
16 Conditions AQSC5 Conditions 1 through 4 would
17 require mitigation measures that would expect to
18 reduce to an insignificant level, the project's
19 contribution to existing levels of PM-10,
20 nevertheless, the PMPD does recognize that the
21 project will be contributing to existing, every
22 high concentrations of PM-10.

23 In addition, the PMPD, as well as the
24 modeling of both the Applicant and the staff,
25 presumes that those mitigation measures will be

1 100 percent effective. AQSC5 will simply require
2 that monitoring be done onsite, during
3 construction, to provide information to ensure
4 that the mitigation measures required are in fact
5 as effective as we expect them to be.

6 I think, given the fact that there are
7 already very high concentrations of PM-10 in the
8 area, given the fact that there are sensitive
9 receptors in close proximity to the proposed
10 project, namely Romoland School and nearby
11 residents, that the Commission should have a very
12 strong interest to make sure that the mitigation
13 measures it's imposing on this project, especially
14 with respect to PM-10, are in fact as effective as
15 we expect them to be.

16 And the staff urges the committee, with
17 respect, to include AQSC5 in the proposed
18 conditions of certification. The Commission has
19 found that it's a feasible way of monitoring for
20 emissions by having imposed it in the Vernon case,
21 as well as in Los Esteros, and at least one other
22 committee at the Commission has proposed it as a
23 Condition, and that is in the Morro Bay case.

24 In addition, finally, requiring such a
25 monitoring condition is consistent with CEQA, the

1 Warren-Alquist Act, and CEQA guidelines. And more
2 specifically with Section 21081.6 of CEQA, the
3 Public Resources Code; 25532 of the Warren-Alquist
4 Act, the Public Resources Code; and Section 15097
5 of the CEQA guidelines, all of which require the
6 lead agency to adopt a monitoring program.

7 And this requirement would be consistent
8 with that directive.

9 COMMISSIONER PERNELL: You know, this
10 committee has spent a lot of time on that issue,
11 as you have stated. I think one of the things
12 that we looked at was the fact that there is a
13 rock, sand and gravel, or concrete pit close to
14 the proposed site.

15 And as I understand it, the way it was
16 explained at the hearing, was that you would set
17 receptacles up at the edge of the property, around
18 the property, and the question I asked, and I'll
19 ask it again, is how accurate would that be with
20 another facility right next door that's creating
21 PM-10?

22 MS. ICHIEN: We do have air quality
23 staff who can get into more detail, but keep in
24 mind that the monitoring that the staff is
25 recommending is intending to capture the

1 difference between the downwind and upwind
2 monitors.

3 And so it would be the difference that
4 results from whatever contributions arise from
5 construction of the project. And while we
6 recognize that there are nearby sources,
7 additional sources of particulate matter, again,
8 keep in mind that what the staff's proposed
9 Condition would focus on would be the difference
10 in downwind and upwind measurements.

11 And as to the placement of the monitors,
12 I think that all of that kind of detail can be
13 worked out post certification, in coming up with
14 the ambient air quality monitoring program that's
15 contemplated in the verification of the proposed
16 condition.

17 COMMISSIONER PERNELL: Right. And I
18 would assume in trying to find out what the
19 difference is it would be over a certain period of
20 time?

21 MS. ICHIEN: Yes. And if you'd like
22 more information on that, I would advice Mr.
23 Brewster or Matt Layton.

24 COMMISSIONER PERNELL: Well, let me just
25 say, the industrial facility that we're talking

1 about, at ceratin times of the day has more dust
2 or particulate matter going on than at other times
3 of the day. I mean, I don't know how you do an
4 effective measurement when, you know, you've got
5 truck coming in and they're actually mixing
6 cement, moving dirt, that's a whole different
7 thing.

8 So do you take the worse case scenario
9 and set the bar? And if that's so, are we doing
10 anything there?

11 MS. ICHIEN: Well, I had similar kinds
12 of questions myself that I asked of staff to try
13 to understand this proposed requirement a little
14 bit better. And those are the kinds of questions
15 that I asked staff myself, and I came away with
16 the understanding that want is intended is again
17 monitoring the difference between downwind and
18 upwind monitors, placed strategically at
19 appropriate places yet to be decided, at the
20 project site.

21 And so, while I was wondering myself how
22 we would differentiate from contributions from
23 nearby particulate sources --

24 COMMISSIONER PERNELL: And especially if
25 they're not constant.

1 MS. ICHIEN: Yes. But once I understood
2 that what the monitors would be capturing is any
3 differences if any occurred that could be
4 attributable to construction at the site,
5 regardless of what contribution is occurring from
6 nearby sources, that that is what would provide
7 feedback for making sure that mitigation measures
8 employed onsite are as effective as we expect them
9 to be.

10 Brewster, would you like to add any
11 more, to illuminate this?

12 MR. BIRDSALL: Sure. My name is
13 Brewster Birdsall, and I'm a consultant to the
14 Energy Commission staff on air quality, and I
15 prepared the staff assessment and the
16 recommendation for this condition -- as you're
17 aware, Commissioner Pernel.

18 COMMISSIONER PERNELL: Good to see you,
19 Brewster.

20 MR. BIRDSALL: And to sort of elaborate
21 on what Ms. Ichien is explaining, by having two
22 monitors, one being upwind and downwind, as long
23 as they are strategically placed, they would
24 capture the baseline conditions, and that would
25 include the neighboring asphalt plant.

1 The idea being that, when you have two
2 monitors in place, and they are upwind and
3 downwind of the power plant construction site,
4 that clouds coming from the asphalt plant would be
5 present in both monitors. So that when you
6 subtract the difference of the data in the two
7 monitors you subtract out the presence of the
8 asphalt plant.

9 And I will agree that positioning the
10 monitors, and setting the averaging times for the
11 monitors, are all details that still need to be
12 worked out at post certification. But I do
13 believe that they can be worked out.

14 COMMISSIONER PERNELL: Right. And I
15 guess my question, I understand the model that
16 you're using, where you do initial monitoring, and
17 then you model for any additional particulate
18 matter that the proposed project would create.

19 I guess my question is, depending upon
20 what time of day and what type of activity is
21 going on, you're going to have a high
22 concentration of PM-10 -- this is on existing
23 facilities that are there that are creating
24 particulate matter, correct?

25 So you've got a monitor upwind and one

1 downwind, and you're doing initial monitoring
2 before the project even begins. So you know what
3 the baseline is. Is that the way it works?

4 MR. BIRDSALL: Well, no, that's not
5 necessarily part of the recommendation. But by
6 having the monitors upwind and downwind of the
7 power plant site, in the summertime the wind would
8 be prevailing from the north, generally.

9 That means that they're both downwind of
10 the asphalt plant, so that the asphalt plant, if
11 it influences the monitors, it's going to
12 influence both of the monitors. So when you see
13 the difference then you can tell, well, the
14 difference must be due to the power plant.

15 COMMISSIONER PERNELL: All right, so
16 you've got -- I'm missing something here, so just
17 bear with me. You've got monitors upwind and
18 downwind of the -- see, I guess what I'm trying to
19 get at is, if you put monitors upwind and downwind
20 of the proposed construction site, right?

21 MR. BIRDSALL: Right.

22 COMMISSIONER PERNELL: So how do you
23 know what's going on with the batch plant?

24 MR. BIRDSALL: Well, we don't care
25 really what's going on at the batch plant.

1 Because the pollution that's coming from the batch
2 plant will be present in both of our monitors,
3 because both of our monitors will usually be
4 downwind of the batch plant.

5 So when we have our two monitors upwind
6 and downwind of the power plant site, when we
7 subtract the one from the other, the difference
8 should only be due to the power plant.

9 COMMISSIONER PERNELL: Oh, I see, okay.
10 So there isn't a scenario that you could get any
11 particulate matter from the batch plant mixed up
12 with the proposed construction site?

13 MR. BIRDSALL: Well, certainly it would
14 be present in the data, but the nice thing about
15 having our power plant site bracketed by upwind
16 and downwind is that the asphalt plant should show
17 up in both of those monitors for the power plant
18 site. And when we take the difference, then it
19 zeroes itself out.

20 COMMISSIONER PERNELL: So you would know
21 the difference between the asphalt plant and the
22 proposed construction site?

23 MR. BIRDSALL: Well, simply the
24 difference between the upwind and downwind around
25 the power plant site would be just the power plant

1 site. So, to answer the question, yes, that would
2 be the difference between whatever is happening at
3 the asphalt plant and what is happening at the
4 power plant.

5 COMMISSIONER PERNELL: All right. Mr.
6 Wheatland, you've got a rebuttal?

7 MR. WHEATLAND: Yes, we'd certainly like
8 to comment on that. I'm going to turn it over to
9 Mr. Rubenstein.

10 MR. RUBENSTEIN: Let me start with the
11 last question first, which has to do with the
12 upwind/downwind placement of the monitors. And
13 let me say that we presented a number of reasons,
14 both in our testimony and in the opening of reply
15 briefs, as to why we didn't think this condition
16 made sense. We're only focusing on one or two
17 concerns here, although all of our concerns
18 remain.

19 With respect to the upwind/downwind
20 issue, I think, Commissioner Pernell, your
21 concerns are very well placed. In the only other
22 project I'm familiar with in which this type of
23 monitoring was performed on a demonstration
24 project, which was at the Los Esteros facility in
25 San Jose, there were a number of occasions where,

1 under exactly the same kind of circumstances we're
2 talking about, a predominant wind coming from the
3 north, the upwind concentrations of PM-10 were
4 higher than the downwind concentrations of PM-10,
5 suggesting that the power plant construction site
6 was cleaning the air.

7 When, in fact, what was happening in San
8 Jose is that there was a substation that was being
9 constructed during approximately the same period
10 of time without adequate dust controls, and as a
11 result there were many cases when you generated
12 concentrations showing that the power plant
13 construction site was cleaning the air.

14 I don't see how -- particularly when
15 we're dealing here with not a construction site,
16 but an aggregate plant --and we're dealing with
17 predominate winds that are going to cause the
18 upwind reading to be higher than the downwind
19 reading, what kind of meaningful information we're
20 expecting to get out of these two monitors.

21 With respect to --

22 COMMISSIONER PERNELL: Does it depend on
23 how fast the wind is blowing? Is that a factor?

24 MR. RUBENSTEIN: Yes, it would. In
25 cases where the wind is relatively calm, the wind

1 direction would be almost irrelevant. And you
2 would have plumes from the aggregate plant -- if
3 there are any dust plumes -- crossing over and
4 hitting that northern monitor, because the winds
5 may be relatively calm.

6 If the winds were faster then you may
7 get more of an effect. But in any event,
8 directionally, you're still going to have a
9 situation where, during -- I believe most of the
10 time -- you're going to have upwind numbers higher
11 than the downwind numbers, and consequently it's
12 not going to tell you anything about how effective
13 the mitigation is.

14 On a couple of occasions this afternoon
15 the staff has suggested that details regarding the
16 location and the averaging time for the monitors
17 could be worked out post certification, that
18 that's a detail we don't have to look at until
19 later.

20 But the fact of the matter is that,
21 although the staff uses the Los Esteros project as
22 an example of where this type of program has been
23 required before, what they're talking about here
24 is fundamentally different.

25 In the case of Los Esteros, the

1 averaging time -- which, Commissioner Pernell, you
2 properly pointed out is an important issue for
3 figuring out how to interpret the data -- was 24
4 hours. There was no short-term feedback mechanism
5 on an hour by hour basis, such as what the staff
6 is proposing here. They're proposing something
7 completely different. And that's an issue we
8 mentioned in our brief.

9 And the locations of the monitors are
10 also fundamentally different, particularly because
11 we have a very clear, stationary source of dust
12 emissions immediately north of the power project.
13 And again, that's an issue that we discussed in
14 our brief.

15 There are a couple of points tht the
16 staff made in their comments on the PMPD, and
17 again this afternoon that I'd finally like to
18 address. First was the staff's claim that our
19 characterization of the Los Esteros monitoring
20 plant as a failure, is hearsay.

21 Those statements, and the use of the
22 word "fail", was made by a member of the
23 Commission staff, testifying under oath, in
24 another proceeding. It was not hearsay.

25 And, while there may be substantial

1 disagreement over what the cause of the failure
2 was, it was the staff's characterization, not the
3 Applicant's, that the Los Esteros monitoring
4 program was a failure.

5 Second, the staff referred to the
6 revised PMPD for the Morro Bay Project as an
7 example of where another committee has recommended
8 this type of monitoring. That's simply not
9 correct.

10 The construction monitoring in the Morro
11 Bay proceeding was required not in the revised
12 PMPD, but it was required over a year and a half
13 ago, in the final staff assessment, at the request
14 of the local air district.

15 The local air district in San Luis
16 Obispo did not have detailed construction
17 mitigation rules, and as a responsible agency they
18 asked the Commission staff to impose additional
19 monitoring requirements.

20 But more specifically to the point here,
21 the construction monitoring at Morro Bay is
22 related to combustion emissions, not dust, and
23 that's expressly set forth in the condition
24 requiring monitoring in the Morro Bay PMPD.

25 If you look at it, it specifically talks

1 about monitoring combustion emissions because, for
2 that project site, both the Applicant and the
3 staff modeled a potential violation of the state
4 NO2 air quality standard, and the air district was
5 very concerned about that.

6 So I don't see, in any way, that the
7 requirement in Morro Bay, or that condition, is
8 applicable to this case. They're completely
9 apples and oranges.

10 And then finally, I agree with Ms.
11 Ichien that, under CEQA, monitoring requirements
12 are necessary for mitigation programs. However, I
13 believe that AQSC1 through AQSC4, which require
14 the preparation of a dust mitigation plan, the
15 presence of an onsite mitigation monitor who is
16 trained to look at potential dust problems and get
17 them corrected, and the monthly compliance
18 reporting requirements, all provide the reporting
19 elements necessary to satisfy CEQA, and that AQSC5
20 is not necessary, under CEQA, to provide an
21 additional layer of monitoring.

22 HEARING OFFICER WILLIS: Staff, do you
23 have any last comments?

24 MR. BIRDSALL: Well, I'd like to just
25 respond. First, some of the suggestions that Mr.

1 Rubenstein that -- of course siting the monitors
2 will be a challenge -- but I think it's premature
3 for us to suggest that locating the monitors
4 upwind and downwind of the power plant sites will
5 automatically reveal an upwind concentration
6 higher than the downwind concentration, upwind of
7 the power plant site that is, simply because of
8 the proximity of the asphalt plant.

9 I think that there is work that can be
10 done on siting the monitors, and we can discuss
11 how to appropriately establish the averaging times
12 so that the discrepancies in wind direction, or
13 discrepancies in wind speeds, and maybe variations
14 in asphalt plant operation, can be managed by
15 processing data appropriately.

16 I think that I'd like to address the
17 issues at Morro Bay and Vernon by saying that,
18 although the monitoring was for combustion-related
19 pollutants during construction, we have a
20 different problem here. We have a particulate
21 matter concern in this area, and there are
22 monitors that can technically and economically
23 monitor particulate matter data, so we are
24 recommending monitoring this pollutant in this
25 case.

1 This is a different problem for a
2 different case, so we have a different
3 recommendation here. But those two projects,
4 Vernon and Morro Bay, are examples of where
5 monitoring, using ambient air quality monitoring
6 systems, can be a source of valuable information
7 to demonstrate compliance with the mitigation
8 measures.

9 COMMISSIONER PERNELL: Let me ask a
10 couple of questions real briefly, and then we can
11 move on. I'm not opposed to monitoring, but I
12 want to feel comfortable that it is accurate, and
13 that it actually happens.

14 So, to tell me we can require this and
15 we'll work it out later, and you've already got an
16 Applicant there that don't want it to happen, so
17 my question is how are you going to work it out?

18 And in the meantime, while you're trying
19 to work it out, what's going on there. Does that
20 stop the project until it gets worked out, or --?
21 So there's some questions I have in moving
22 forward, at least in that scenario.

23 The other one, though, is -- let me just
24 ask you point blank. The power project that you
25 used this monitoring on, was it effective, did you

1 get the necessary information you needed to get,
2 etc.?

3 MR. BIRDSALL: I think that, no, it
4 wasn't effective. The information that I've seen
5 on the Los Esteros pilot project indicates that
6 the monitors, when they were out in the field and
7 operated by the field crews, may not have been
8 operating properly. They may not have been
9 operating according to the specifications for
10 simply operating the monitoring system, and that
11 calibration was a problem.

12 Now, with calibration being a problem,
13 it would appear to me that the data tha's gathered
14 at the Los Esteros demonstration project was just
15 not valuable. It may have even been meaningless.

16 COMMISSIONER PERNELL: So have you guys
17 done something to correct the calibration problem?

18 MR. BIRDSALL: Well, I think that the
19 best we can do is to watch closely to see how the
20 monitors would be operated, and to verify that
21 they would be operated according to how the
22 manufacturer of the monitor recommends.

23 COMMISSIONER PERNELL: Okay. Follow up,
24 Mr. Rubenstein has a short rebuttal.

25 MR. RUBENSTEIN: Very short, I promise.

1 The issue about whether the monitors in Los
2 Esteros were calibrated or not was dealt with
3 extensively in the San Joaquin Valley Energy
4 Center proceeding. I do not want to reopen all of
5 those issues. If you wish to review them you can
6 review the briefs that both parties filed in that
7 case.

8 But the short answer is that I reviewed
9 the calibration specifications after the staff
10 first raised this issue, and the monitors used at
11 Los Esteros were recommended by the vendor to be
12 calibrated once per month, and they were. The
13 staff's opinion is that they should have been
14 calibrated more frequently.

15 And so, we're getting to exactly the
16 kind of problem that, Commissioner Pernell, you
17 were expressing concern about.

18 COMMISSIONER PERNELL: All right. Well,
19 we don't want to get into it here.

20 HEARING OFFICER WILLIS: I just wanted
21 to go back to the staff on the final comments that
22 you had on your written comments. The Applicant
23 has agreed to the changes in air quality section.
24 Was there anything else that you wanted to add? I
25 don't see any issues with any of the other

1 comments.

2 MS. ICHIEN: No, I have no further
3 comments, other than to remind the committee of
4 the staff's -- I think it was July 28 -- errata
5 that was submitted. And it represents changes to
6 the proposed conditions that were agreed to by
7 both Applicant and staff.

8 HEARING OFFICER WILLIS: That were then
9 received and submitted. Mr. Wheatland, do you
10 have any final comments on the staff's last few
11 comments?

12 MR. WHEATLAND: We agree with the July
13 28th errata and with the changes that are
14 contained therein, and also to the other air
15 quality comments on pages four and five.

16 HEARING OFFICER WILLIS: And just for
17 the record, we also added the attachment to air
18 quality, AQSC16, equipment description, that was
19 omitted from the Decision as well. and I think I
20 forwarded that on to your staff. Are there any
21 other comments?

22 MS. ICHIEN: May I add one more final
23 statement in response to a couple of things? First
24 of all, Commissioner Pernell, you indicated the
25 Applicant's reluctance to do monitoring, so that

1 presents a potential problem were that to be
2 required.

3 But if the committee and the Commission
4 were to require it, it would be a condition of
5 certification that the Applicant would have to
6 adhere to in order to continue on with
7 construction and operation. So I think the
8 imposition of it as a condition of certification
9 will have a certain force and effect that will
10 more likely than not result in compliance with the
11 condition.

12 And then secondly, with respect to
13 monitoring requirements by CEQA and the Warren-
14 Alquist Act, ACSC3 does require a compliance
15 report, but that is all that it requires, a
16 compliance report.

17 This proposed condition would result in
18 additional data, hopefully realtime data, that
19 will turn out to be meaningful to look at whatever
20 contribution the project may have of PM-10, which,
21 after all, is at very high concentrations in this
22 area. And while the staff and Applicant, and the
23 committee as well -- have concluded that with
24 mitigation there won't be any significant adverse
25 impacts, nevertheless, there will be increases.

1 And I think it behooves the agency to
2 try to implement measures such as monitoring, to
3 make sure that the mitigation of this emission is
4 as effective as we expect mitigation to be.

5 COMMISSIONER PERNELL: So monitoring is
6 basically measuring the mitigation that we have
7 put forth?

8 MS. ICHIEN: Yes. It's a source of
9 providing feedback to make sure that the
10 mitigation is accomplishing what we expect it to
11 accomplish, in the way of dampening dust and
12 minimizing the project's contribution to
13 particulate matter.

14 COMMISSIONER PERNELL: Okay.

15 MR. WHEATLAND: If I could just add, I
16 would see it as a little bit more than just mere
17 feedback. It's another regulatory layer that is
18 being imposed over what is already demonstrated in
19 this record to be the requirements for
20 justification by the South Coast District.

21 Our record indicates that they have one
22 of the most stringent dust mitigation programs in
23 the state, if not the country, and what this
24 monitoring is, is another regulatory layer that
25 will be imposed over that.

1 COMMISSIONER PERNELL: All right. I'm
2 going to have to leave it at that. This issue
3 will be back with the committee. So, more to
4 come.

5 Is there anything else? Does anyone
6 else want to do a closing statement minus the
7 previous issue?

8 MR. WHEATLAND: I have one procedural
9 question?

10 COMMISSIONER PERNELL: Yes.

11 MR. WHEATLAND: Would you contemplate a
12 revised PMPD being issued before the meeting on
13 the 17th?

14 HEARING OFFICER WILLIS: I don't think
15 it's officially revised, I think we just add an
16 errata.

17 MR. WHEATLAND: An errata.

18 HEARING OFFICER WILLIS: Yes. I'm
19 assuming it will be out before the 17th, with the
20 changes. I don't think there will be a huge
21 number of surprises, at least from what we've
22 discussed today. There are air quality issues
23 that remain, you know, and will be considered by
24 the committee.

25 COMMISSIONER PERNELL: As far as I know

1 we are on schedule for the 17th, unless you guys
2 come up with something that I don't know about.
3 is there anything else?

4 I want to take the opportunity, in
5 closing, to thank the community for coming out.
6 Some faces I've seen every time I've been down
7 here, and that's a good thing. And I really want
8 to thank you for that.

9 I would just ask the Applicant to, this
10 is, in certain portions of this community, is
11 economically deprived, if I can say it that way.
12 So I would hope that you work with the local
13 community in terms of job creation. I know it's
14 not anything I can put in the document, but given
15 your reputation I would think that you would do
16 that.

17 I also want to say that, in terms of the
18 monitoring, I think it's a great thing to have the
19 monitors, but we really need to get it right. If
20 it's wrong and the manufacturers are not
21 calibrating it right, whatever it is, we need to
22 fix it, so that when we require it it's giving us
23 accurate data, even if it's broken.

24 I don't know that it's broken or not,
25 but I'm simply saying that I think it's a good

1 tool, but the tool has to work. So, with that,
2 again, on behalf of the committee and the full
3 Commission I want to thank all of you, and
4 certainly thank the city of Perris for
5 accommodating us.

6 And if there's nothing else to come
7 before this committee, this committee is
8 adjourned. Thank you again.
9 (Thereupon the hearing adjourned at 3:20 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES A. RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of December, 2003.

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